IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

CHAMPALAL PARIHAR. V. THE STATE OF RAJASTHAN AND OTHERS.

S.B. CIVIL WRIT PETITION NO.4245/2005, under Article 226/227 of the Constitution of India.

DATE OF ORDER: 09.09.2005.

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS.

Mr.C.P.Trivedi, for Petitioner.
Mr.Shiv Kumar Vyas, Government Advocate, for the State of Rajasthan – Respondents.
Mr.D.R.Gujar, for Respondent.

BY THE COURT:

REPORTABLE.

This writ petition has been filed by the petitioner with the prayer that a writ, order or direction in the appropriate nature may kindly be issued and the impugned order dated 14.7.2005 (Annexure-3) may be quashed and set aside, with all consequential.

Brief facts, giving rise to the instant petition, are that in the year, 1997, the petitioner was appointed as a Junior Engineer (JEN). At present, the petitioner is working as JEN at

Panchayat Samiti, Luni. Vide order dated 15.9.2004 (Annexure 1), the petitioner was transferred from Panchayat Samiti, Balesar to Panchayat Samiti, Luni.

It is also averred in the instant petition by the petitioner that he is suffering from an incurable disease, i.e., brain-hemrage and is taking treatment from Neuro Physician at Jodhpur.

Now, vide order dated 14.7.2005 (Annexure 3), the petitioner has been transferred from Panchayat Samiti, Luni to Panchayat Samiti, Bhinmal, District – Jalore. In place of the petitioner, one Mohanlal Ahori has been transferred from Panchayat Samiti, Ahore to Panchayat Samiti, Luni. The petitioner's name finds place at S.No.44 of the impugned transfer order. According to the impugned transfer order, the petitioner will not be entitled to claim for T.A. and joining period. After receiving the impugned order dated 14.7.2005 (Annexure 3), the petitioner submitted a representation to the respondents, in which he clearly stated that he has not made any request regarding his transfer, but the respondents have transferred him as if he had made a request for transfer from Panchayat Samiti, Luni to any other place.

Being aggrieved from the inaction on the part of the

respondents, the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that the impugned order of transfer dated 14.7.2005 (Annexure 3) has been passed by the respondents without any administrative exigency and public interest.

It is further submitted by the learned counsel for the petitioner that in the month of September, 2004, the petitioner joined his duties at Panchayat Samiti, Luni and now, within a period of ten months, he has been transferred from Panchayat Samiti, Luni to Panchat Samiti, Bhinmal.

It is also submitted by the learned counsel for the petitioner that the State Government has published Policy from time to time regarding transfer, in which it is clearly stated that those persons, who are suffering from incurable disease, should not be transferred from the present posting place, whereas, despite the fact that the petitioner is suffering from incurable disease of brain-hemrage, yet the respondents have transferred from Luni to Bhinmal. Thus, according to the learned counsel, the impugned transfer order passed by the respondents is illegal, unjustified and against the transfer policy published by the State Government.

Learned counsel for the petitioner has invited my attention to Rules 289 and 291 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as 'the Rule of 1996'). Rule 289 provides for transfer within the district and Rule 291 prescribes seniority of the employee outside the district. Rules 289 and 291 read as under :-

> **Rule 289. Transfer within the district –** (1) The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the District Establishment Committee by the Panchayat Samiti.
>
> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the District Establishment Committee.
>
> (3) State Government may issue orders regarding transfers from time to time. In case District Establishment Committee/Standing Committee of Panchayat Samiti does not agree, Chief Executive Officer/Vikas Adhikari, as the case may be, shall carry out orders of the State Government.
>
> (4)-On transfer of the employee, his confidential toll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred."
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> **"Rule 291. Seniority on transfer . -** Seniority of an employee transferred outside the district, by the State Government under sub-section (8-A) of Section 89 shall be determined by the Committee of the District to which

he is transferred :-

> (i) if the transfer is made on the request of the employee, his seniority shall be fixed at the bottom of the seniority list of the cadre to which he belongs; and
>
> (ii) if the transfer is made on administrative or other reasons, his seniority shall be fixed on the basis of his continuous length of substantive service on an analogous post."

Learned counsel for the petitioner submits that according to Rule 291, if the transfer is made on the request of the employee, his seniority shall be fixed at the bottom of the seniority list of the cadre to which he belongs. Thus, the learned counsel submits that the impugned transfer order issued by the respondents is without any rhyme or reason and without any administrative exigency. Not only that, even no request has been made by the petitioner to transfer him to any other place. If the petitioner is transferred, then his seniority will be disturbed as per Rule 291 of the Rules, 1996. In this view of the matter, according to the learned counsel for the petitioner, the impugned transfer order is illegal and unjustified.

In support of his contentions, learned counsel for the petitioner has referred to the case of Brijendra Singh v. State of Rajasthan & Others (S.B.Civil Writ Petition No.2813/1990),

decided on 28.1.1991, by the learned Single Judge – Hon'ble Mr.Justice G.S.Singhvi (as he then was) of this Court. The matter was pertaining to the transfer of low paid employee of the State Insurance and Provident Fund Department. The order by which he was transferred from Sawaimadhopur to Bhilwara, stipulated that Brijendra Singh is being transferred on his own request and it was mentioned in the order that he will not be entitled to joining time and travelling allowance. He made a representation, but his representation was not considered. Ultimately, he approached this Court under Article 226 of the Constitution of India and this Court quashed the transfer order. Similarly, in B.Vardha Rao v. State of Kanataka (A.I.R. 1986 SC 1955), while considering the question of transfer, their Lordships of the Supreme Court observed that unscheduled, unreasonable and frequent transfers uproot a family, cause irreparable harm to a Government servant and derive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and result in hardship and demoralisation.

On the other hand, it is submitted by Mr.S.K.Vyas, learned Government Advocate, that by the impugned order, huge transfers have been made in the administrative exigencies, as it is a general transfer order, by which 93 JENs have been transferred by the State Government. It is further submitted

that the petitioner has not produced on record any transfer policy.

Heard learned counsel for the parties.

It is admitted position that vide impugned order dated 14.7.2005 (Annexure 3), the petitioner has been transferred from Luni to Bhinmal. As per the aforesaid transfer order, he will not be entitled to claim for any travelling allowance and joining period. It is also admitted position that the petitioner has not made any request for his transfer to any other place, whereas the impugned transfer order (Annexure 3) stipulates that the petitioner has been transferred on his own request. Apart from that as per Rule 291 of the Rules, if the petitioner is transferred from one district to another district, he will lose his seniority and will be placed at the bottom of the seniority list of the cadre to which he belongs. It may be mentioned that frequent, unscheduled and unreasonable transfers uproot a family, cause irreparable harm to a Government servant and derive him to desperation. It disrupts the education of his children and leads to numerous other complication and other problems, which ultimately result in hardship and demoralisation.

In view of the aforesaid discussion, the writ petition is allowed. The order dated 14.7.2005 (Annexure 3), so far as it

relates to the petitioner is concerned, is quashed and set aside. The petitioner shall be allowed to work at Panchayat Samiti, Luni, District – Jodhpur.

There will be no order as to costs.

(R.P.VYAS), J.

scd.